IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7982 of 1991

For Approval and Signature:

Hon'ble MR.JUSTICE K.M.MEHTA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARSHOTTAMBHAI M SHAH

Versus

STATE OF GUJARAT

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Appearance:

MS VASUBEN P SHAH for Petitioner

MR HJ NANAVATI for Respondent No. 1

GOVERNMENT PLEADER for Respondent No. 2, 3

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CORAM : MR.JUSTICE K.M.MEHTA

Date of decision: 08/09/2000

ORAL JUDGEMENT

#. Shri Parsottambhai M. Shah, the petitioner, Post Basic Education Society Sanchalit P.B.High School, Dahod has challenged the order dated 14.10.91 passed by Gujarat Higher Secondary Schools Services Tribunal at Ahmedabad

(hereinafter referred to as `Tribunal') directing the petitioner to recall and reabsorb Shri Kirtikumar Kanaiyalal Jani, respondent No.1 in his services even though the respondent No.1 had admittedly tendered the resignation on 15.7.89 in accordance with law to New Era High School where he was absorbed after being declared surplus in the petitioner's school and even though, thereafter he has got appointment and is working in the Government school.

#. In the petition it has been stated that the Basic Education Society was informed by the citizens of Dahod under the Indian Societies Registration Act in the year 1965 and it was also registered as public charitable Trust under the Bombay Public Trust Act under the registration No.PMSF-36. The main objective of the said society amongst others was to impart technical education to the students residing in the town of Dahod and the surrounding villages so as to equip for getting them employment or for self-employment. For that purpose under the pattern of 10+2 the petitioner was running in the Higher Secondary Section the old technical stream comprising of the combined course in the subject of civil, mechanical and electrical branches. The petitioner was having one division in Std. XI and one division in Std. XII in the said technical stream.

#. It was submitted in the petition that in view of the government policy introducing the vocational bias/stream in place of technical stream in the Higher Secondary section, the petitioner was granted sanction by the respondent No.2 to close down Std. XI from June, 1987 and Std.XII from June, 1988. In consequence thereof the respondent No.2 declared the respondent No.1 and four other teachers surplus and directed the respondent No.2 to absorb the said surplus teachers elsewhere in view of the government policy, by the order dated 22.4.1988.

#. The petitioner submitted that the Director of Education, respondent No.3 granted sanction by the Order dated 15.7.88 for starting the courses in technical group of vocational stream/bias in its higher secondary section, namely (1) Auto Engineering technician (2) Electronic Technology. The respondent No.3 also granted sanction on 15.7.88 for starting the courses in the commerce group in vocational stream/bias in two subjects namely (1) office management and (2) Stenography. The petitioner submits that the Government has also laid down the staff pattern and the qualification for the appointment of the teaching and non-teaching staff in the vocational stream by the resolution dated 22.9.1987.

#. As per the norms laid down by the Government in the subject of Auto Engineering Technician in the technical groups the petitioner was required to appoint three persons namely (A) a vocational subject teacher (B) academic subject teacher and (C) the Garage Workshop Coordinator, in the subject of electronics Technology in the technical group, the petitioner was required to appoint (A) a vocational subject teacher (B) an academic subject teacher and (C) a typewriting instructor. In the subject of stenography in commerce group the petitioner was required to appoint (A) a vocational subject teacher (B) an academic subject teacher and (C) shorthand instructor. The petitioner says that thus for four subjects the petitioner had to make appointment of 12 teachers with requisite experience and qualification. The government introduced the new curriculum in the vocational stream from 1987. For that purpose a programme of examination was held in March, 1989 by Gujarat Secondary Education Board as per the new curriculum laid down by the Government.

#. In the petition it was averred that keeping in mind the said curriculum the respondent No.2 by the order dated 10.10.1988 granted a No Objection Certificate for appointing four teachers in the Technical group. It is submitted that by order dated 10.10.1988 the respondent No.2 had granted NOC for (1) Workshop/Garaga Coordinator (2) Workshop Laboratory Coordinator (3) Vocational subject teacher and (4) academic subject teacher.

#. The petitioner submitted that one Shri M.J.Desai who was declared surplus on account of the closure of the technical stream had approached the Tribunal and had obtained the stay for filing up the post of vocational subject teacher in the subject of auto engineering technician, and hence NOC was not granted by the respondent No.2 for one post of the vocational subject teacher. One Shilaben Manuel who was declared surplus was directed by the respondent No.2 to be reabsorbed on one of the posts of the academic subject teacher. The petitioner therefore submitted that in view of the inclusion of subject of Gujarat and Entrepreneurship in all vocational streams, the petitioner had persuaded the respondent No.2 to give an academic subject teacher with such qualifications who would be in a position teach the said subjects in all courses started by the petitioner. thus the respondent No.2 had given the NOC for the academic subject teacher with the qualification of B.A., B.Ed. (with the proficiency of teaching English, Gujarati and Entrepreneurship.

#. The petitioner therefore submitted that after being declared surplus, the respondent No.1 was absorbed in Godhra Anaj Mahajan Sarvajanik High School, Godhra also known as the New Era High School, (hereinafter referred to as the New Era High School). The respondent No.1, therefore, informed the petitioner by the letter dated 19.7.88 that he wanted to be relieved from the service after office hours on 20.7.88 so as to report for duty on 21.7.88 at the New Era School. The petitioner therefore submitted the said fact by the letter dated 29.11.88 to the second respondent. The respondent No.2 has inquired from the petitioner as to whether the respondent No.1 could be accommodated on the post of academic subject teacher with the qualification of M.Sc. B.Ed. or B.Sc. B.Ed. in the subjects of Physics and Maths. or the vocational subject teacher with diploma in electronics for which posts the petitioner had sought the NOC and as to whether he could be accommodated on any post other than the said two posts. By the letter dated 8.12.88 the petitioner informed the respondent NO.2 that the respondent No.1 was not possessing the requisite qualification as prescribed by the government resolution, that it would not be in the interest of the students to reabsorb the respondent No.1 on any of the two posts in the subject of electronics technology.

#. The learned counsel for the petitioner, Ms.Brahmbhatt submitted that even though the respondent No.1 was already absorbed as surplus teacher in the New Era High School and even though he was not having the requisite qualification, the respondent No.2 was without any authority insisting upon reabsorbing the respondent No.1 in the petitioner school. It was submitted that the principal of the New Era High School by the letter dated 18.1.89 brought to the notice of the respondent No.2 that once the respondent NO.2 was allotted as a surplus teacher to his school, the respondent No.1 ceased to be a surplus teacher and it would not be open to him to treat the respondent No.1 surplus till the management of the said school declared him surplus.

##. The learned counsel for the petitioner submitted that the petitioner by letter dated 30.1.89, addressed the letter to the respondent No.3 and brought to his notice that the post of academic teacher in the technical subject was not vacant in the school and hence there was no question of absorbing the respondent No.1 in the school.

##. From the record it appears that the respondent No.1

in the meanwhile filed the application No.17 of 89 before the Tribunal in February, 1989 for the declaration that the action of the petitioner in not recalling and reabsorbing in pursuance of the order passed by the respondent No.2 was illegal and for quashing the same and for declaration that he was entitled to be reabsorbed in the petitioner school by the recall, alleging therein inter alia that for the new technical group, the post of academic subject teacher and the workshop coordinator were sanctioned in the petitioner school and as the respondent No.1 was having the qualification of M.Sc. B.Ed. he could be accommodated in the said staff pattern. It was submitted that learned Tribunal had granted interim stay on 3.2.89, restraining the petitioner from making fresh appointment on the post of academic subject teacher (physics, mathematics) in the technical group.

##. The learned counsel for the petitioner submitted that before the learned Tribunal the petitioner had pointed out that the respondent No.1 had resigned on 15.9.89 from the school where he was absorbed and hence he had lost his claim of being recalled in the parent school and that the respondent No.1 did not possess the qualification for being absorbed in the petitioner school, and he had no right on the petitioner parent school for being absorbed.

##. The Gujarat Higher Secondary Schools Services Tribunal at Ahmedabad by its judgment and order dated 19.10.91 allowed the application of the respondent No.1-applicant and directed the opponent school (the petitioner herein) to allow the applicant (respondent No.1 herein) to attend duties as academic teacher in the technical group of vocational basis higher secondary section.

##. When the matter was placed before this court on 13.10.91 this court (Coram : C.K.Thakkar, J. as he then was) was pleased to pass following order :-

"Mr.H.J.Nanavati states that respondent No.1 will not enforce the order passed by the Tribunal till then"

##. Therefore, this court (Coram : M.B.Shah, as he then was) passed the following order on 18.12.91 :-

"Rule.

Respondent No.1 was working as a teacher in the school managed by the petitioner. He was declared as surplus teacher in 1988-89 by respondent No.3. Thereafter, respondent No.1 was absorbed as a surplus teacher in the New Era High School at Dahod. From that school, he resigned. Subsequently, he was selected and appointed in Government High School, Rajkot. At present, he is in service of that school as a teacher.

The petitioner advertised for appointing academic teachers. At that stage, respondent No.1 submitted that as he was declared as surplus teacher, he should be reabsorbed by the petitioner. As respondent No.1 was not reabsorbed by the petitioner, respondent No.1 filed an application before the Gujarat Higher Secondary School Tribunal. The Tribunal allowed the application of respondent No.1. Against that order, the petitioner filed this Special Civil Application.

There is no statutory provision or rule which prescribes that once a school teacher is declared as surplus teacher, he would continue to be surplus teacher all throughout even after he is absorbed in one school. If the surplus teacher resigns from one school where he is absorbed and thereafter he gets service in another school, prima facie, he cannot be considered to be a surplus teacher in the original school where he was working.

Hence, operation of the impugned order is stayed with a direction that any appointment of academic teacher by the petitioner would be subject to the result of this petition. The petitioner would make this clear in the appointment order that appointment of academic teacher is subject to result and further directions in this petition."

##. When the matter came up for hearing today, Ms. Brahmbhatt argued the matter very ably. However, Ms.Acharya, who is appearing on behalf of respondent Nos. 2 and 3 has stated after obtaining the instructions from the officers that Shri K.K.Jani, respondent No.1 herein has already joined as teacher in the school from 20.9.93 and, therefore, no useful purpose will be served in hearing the matter and adjudicating the matter on merits.

##. Ms.Acharya, learned counsel for respondent Nos. 2 and 3 has put on record a letter addressed by Shri K.K.Jani, respondent No.1 herein dated 5.9.2000 to District Education Officer, Dahod, in which after stating out the facts which is subject matter of the petition the respondent No.1 has stated that he was relieved on 27.7.89 from New Era High School, Godhra and joined Adarsh Nivas School, Rajpipla and, thereafter on 10.12.90 he was transferred to Adarsh Nivas Shala, Rajkot and therefrom he was relieved on 19.9.93 and thereafter again he was performing his duty as teacher at Adarsh Nivas School, Dahod. In view of the said letter, Principal, Government Adarsh Nivashi Shala, Dahod has given certificate that respondent No.1 is working as teacher since 20.9.93. The said certificate is dated 4.9.2000.

##. In view of the above development, Ms.Brahmbhatt, learned advocate for the petitioner on behalf of Ms.V.P.Shah does not press for the writ petition at this stage and Mr.H.J.Nanavati, learned advocate for respondent No.1 also stated that he will also not insist for any relief in pursuance to the order of Tribunal at this stage.

##. In view of the same the petition is partly allowed. Both the petitioner as well as respondent No.1 will not claim any relief in future on the basis of the order of the Tribunal, in view of the subsequent development which took place in the matter. However, in case of any difficulty liberty is granted to apply.

(K.M.Mehta, J.)
*Pvv